Hong Kong Police Force refused to provide information relating to procurement and disposal of tear gas rounds (Related to Code on Access to Information)

Investigation Report

The Complaint

This Office received a complaint from Mr C against the Hong Kong Police Force ("HKPF") for its refusal to provide six pieces of information for the period between 1 April 2016 and 30 June 2019 in accordance with the Code on Access to Information ("the Code"). The information requested included the following:

(a) the quantity of each type of tear gas rounds procured by HKPF;

(b) the number of contracts involved in the procurement of the tear gas rounds in item (a) and the value of each procurement contract;

(c) the batches, manufacturing dates and expiry dates of each type of tear gas rounds involved in the procurement contracts in item (b);

(d) the list of suppliers of tear gas rounds involved in the procurement contracts in item (b), including company names and the countries/regions concerned;

(e) the quantity of each type of tear gas rounds which were disposed of, the frequency of disposal and the date of procurement of the tear gas rounds disposed of; and

(f) the procedures for disposal of tear gas rounds.

Our Findings

Sequence of Events

2. Mr C made a request to HKPF under the Code for the aforesaid six pieces of information. In its reply to Mr C's request, HKPF explained that it would take the advice of the supplier and use the procured tear gas rounds before their expiry. Expired tear gas rounds would be used in HKPF's routine training.

3. HKPF considered that the information requested by Mr C about tear gas rounds was sensitive information. By invoking paragraphs 2.6(e)[1] and 2.6(f)[2] of the Code, HKPF refused Mr C's request for information on the grounds that disclosure of such information would harm the prevention, investigation and detection of crime and offences, and affect the Police in performing its duty to preserve the peace, public safety or order.

4. Against HKPF's decision, Mr C asked for a review and HKPF's elaboration on its justification for refusal under the Code. After reviewing the case, HKPF replied that it would maintain its decision based on the relevant paragraphs of the Guidelines on Interpretation and Application on the Code ("the Guidelines"), including paragraphs 2.6.16 (i.e. the Code does not oblige the Government to disclose information which would be of assistance to actual or potential lawbreakers), 2.6.19 (i.e. disclosure would be prejudicial to a law enforcement process) and 2.6.20 (i.e. disclose information which would assist those who attempt to disturb public order or threaten property).

Response from HKPF

5. HKPF said that, since 9 June 2019, it has been dealing with numerous protests arising from oppositions against the amendment

[1] Paragraph 2.6(e) of the Code: Information the disclosure of which would harm or prejudice the prevention, investigation and detection of crime and offences, the apprehension or prosecution of offenders, or the security of any detention facility or prison.

[2] Paragraph 2.6(f) of the Code: Information the disclosure of which would harm or prejudice the preservation of the peace, public safety or order, or the preservation of property.

to the Fugitive Offenders Ordinance. HKPF emphasised that in the recent protests some extremely violent protesters had engaged in illegal activities, causing serious damages and disturbing public order. With the rising level of violence, the safety of the police officers, journalists and members of the public at the scene has been threatened, and the risk posed on public safety and order in Hong Kong has been raised to an unprecedented level.

6. HKPF further noted that among the six pieces of information requested by Mr C, five (items (a) to (e)) were related to the quantity, source of supply and disposal of tear gas rounds procured by HKPF. Such information was pertinent to HKPF's planning for operation and was very sensitive. Disclosure of such information might assist lawbreakers in understanding the supply of ammunition to HKPF and related details. In HKPF's view, improper use of such information would very likely undermine its capacity and strategies in dealing with large-scale illegal activities, and adversely affect its work on the prevention of such illegal activities. Hence, HKPF invoked paragraphs 2.6(e) and 2.6(f) of the Code to refuse Mr C's request for the aforesaid information.

7. Besides, HKPF opined that paragraph 2.1.2 of the Guidelines (see **para. 9**) only required the department concerned to elaborate on its justification to invoke the relevant paragraph(s) in Part 2 of the Code where applicable. Providing detailed explanation to Mr C on how disclosure of his requested information would harm the prevention of crime and offences and preservation of public safety was equivalent to revealing the operational effectiveness of HKPF. In its reply to Mr C, HKPF had already pointed out that what he requested was very sensitive information involving HKPF's operational deployment for crowd management in public events. HKPF considered that it had explained its justification to Mr C as far as practicable, so it did not contravene the Code.

8. As regards item (f) (i.e. the procedures for disposal of tear gas rounds), HKPF pointed out that it had explained in its initial reply to Mr C how it disposed of unused tear gas rounds after the expiry dates suggested by the suppliers (see **para. 2**). In response to our

investigation, HKPF added that unused tear gas rounds would be disposed of in accordance with the Stores and Procurement Regulations subject to the approval by the Departmental Disposal Committee.

Our Comments

9. The Code requires Government departments to make available Government-held information for the public as far as practicable unless there are valid reasons as those set out in Part 2 of the Code for withholding such information. It is also stated in paragraph 2.1.2 of the Guidelines that when a request for information is to be refused or partially refused, the applicant concerned must be informed of the reasons for refusal quoting all the relevant paragraph(s) in Part 2 of the Code on which the refusal is based with appropriate elaboration to justify invoking the relevant paragraph(s) in Part 2 of the Code (where applicable).

10. This Office agrees that information items (a) to (e) are pertinent to the details of supply and disposal of tear gas rounds as HKPF suggested. Given the nature of such information, we accept that disclosure of these items would enable understanding of the details of supply and disposal of tear gas rounds, which may undermine the capacity and deployment of HKPF in dealing with illegal activities, thus causing harm to HKPF's work on the preservation of public safety (see **para. 6**). That means paragraph 2.6(f) of the Code is applicable.

11. Paragraph 2.6.17 of the Guidelines elaborates on paragraph 2.6(e) of the Code that "*the effective investigation of both criminal and regulatory offences will ordinarily require that the investigation and methods of investigation are kept secret from the suspect and from other persons. This means that information relating to both ongoing and completed investigations…should ordinarily be kept confidential.*" Considering the nature of the information requested, we doubt whether the provisions are applicable to this case. Nevertheless, HKPF had other justification for withholding information regarding items (a) to (e) (see **para. 10**).

12. On the whole, as stated in **paragraph 10** above, we consider that HKPF's refusal to release information regarding items (a) to (e) requested by Mr C was not in breach of the requirements of the Code. However, we note that HKPF's reply regarding item (f) was incomplete in elaborating on the issue to Mr C. That said, HKPF had explained the relevant procedures in **paragraph 8** above.

13. Paragraph 2.1.2 of the Guidelines stipulates that the department concerned should elaborate on its justification to invoke the relevant paragraph(s) in Part 2 of the Code where applicable. We are of the view that Government departments are obliged to explain to the applicant the justification for their decision instead of merely citing the relevant paragraphs of the Code. HKPF's explanation in **paragraph 6** above had not disclosed the effectiveness or any details of its operations, but could help Mr C understand its justification for invoking paragraph 2.6(f) of the Code to refuse his request. In our view, HKPF should have elaborated on its justification in its reply to Mr C so as to comply with the requirements of the Code.

Conclusion

14. In view of the analysis in **paragraphs 10 to 13** above, this Office considers that Mr C's complaint against HKPF is **unsubstantiated, but there are other inadequacies found**.

15. We urge HKPF to learn from this complaint and make sure that its staff will strictly comply with the requirements of the Code in handling requests for information from members of the public. When invoking any provisions in Part 2 of the Code as the reason for refusing the applicant's request for information, HKPF should elaborate on its justification.

Office of The Ombudsman
March 2020